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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/075,244 | 02/15/2002 | Hiroiyuki Nakano | 501.41175X00 | 7857 |

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EXAMINER

PADGETT, MARIANNE L

| ART UNIT | PAPER NUMBER |
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1762

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/075,244</p> | <p>Applicant(s) NAKANO ET AL.</p> | |
| | <p>Examiner Marianne L. Padgett</p> | <p>Art Unit 1762</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on 18 April 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☒ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): the 112 in section 2 of the action mailed 11/18/04.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-18

Claim(s) withdrawn from consideration: 19-35

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☒ Other: See Continuation Sheet.

Marianne L. Padgett

**MARIANNE PADGETT
PRIMARY EXAMINER**

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Continuation of 3. NOTE: (i) The use of a "database storing predetermined relationships..." is a new issue not previously considered; (ii) when reviewed in light of the cited support on p.30-32, the "relationships...state of contamination..." appear to include New Matter, because while cited pages support predetermined (= in-advance) state is the thickness or profile or position, they do not support the broadly claimed state that may include composition or microstructure, etc; (iii) are the 2 "a signal obtained..." & "a state..." in lines 14-18 of claim 1 the same or different limitations? Also note in line 16 "step" was not changed to "operation", so lacks antecedence. (iv) In claim 12, lines 15-16, "an inside of said plasma" does not make sense or is non-idiomatic, is a new issue & not clarified by applicants' further citations on p.21 or 35-37, however "predetermined relation of imaging" also on these lines, discussed on p.21, lines 15-end-of-page, while not related to "inside of said plasma", is discussed in relationship to the gathering of scattered light from an area over or "in front of" a wafer (from edge to edge), which is not the scope claimed & if overlapping is narrower, hence also includes New Matter. (v) The scope of the last 4 lines of claim 12 needs to be similarly evaluated for New Matter.

Continuation of 11. does NOT place the application in condition for allowance because: (i) the above noted New Matter issues & new clarity issues. (ii) The prior art needs evaluation & search in light of new issues with consideration of whether or not use of databases in the scope as claimed, would have been obvious. Note light was used & processed in the applied prior art references, hence the detector therefore were inherently "optical" & as the light detected was not random, it may be said to be predetermined.

Continuation of 13. Other: The proposed drawing corrections would be acceptable to the examiner.

On the PTOL-326 of the 11/18/04 mailing its noted that item 6) should read claims 1-18 are rejected (as above) & on p.3, section 5 (3rd line) of that action, a --6-- should be inserted in front of "section" when referring to paper #9.


MARIANNE PADGETT
PRIMARY EXAMINER